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In re Application of :
GAUTIER et al. :
Application No.: 09/979,549 : DECISION
PCT No.: PCT/FR00/01318 :
Int. Filing Date: 17 May 2000 :
Priority Date: 17 May 1999 :
Attorney's Docket No.:ORES10.001APC :
For: PROMOTER OF THIOREDOXINE TaTrxh2 :
IN WHEAT :
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This notification is in response to applicant's "RENEWED PETITION UNDER 37 C.F.R. 1.6(e)" filed 27 August 2002 requesting a receipt date of 19 November 2001.

BACKGROUND

On 17 May 2000, applicants filed international application PCT/FR00/01318, which claimed a priority date of 17 May 1999. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 23 November 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 22 November 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 19 November 2001 (17 November 2001 being a Saturday).

On 20 November 2001, applicants submitted a transmittal letter for entry into the U.S. national stage (Form PTO-1390), which was accompanied by, *inter alia*, the U.S. Basic National Fee. This submission was assigned Application Number 09/979,549. On 20 November 2001, applicants also submitted the instant "PETITION FOR FILING DATE" requesting that the above-identified papers be accorded a receipt date of 19 November 2001 and a "STATEMENT OF JOSE COLUNGA".

On 25 March 2002, a decision was mailed dismissing applicant's petition that the application be accorded a filing date of 19 November 2001 in accordance with 37 CFR 1.6(e) without prejudice. Specifically, it was noted that it was not clear what was meant by "we" in the statement of Jose Colunga, that November 19, 2001 was a Monday (not a Tuesday as stated in

the statement of Jose Colunga), and that the "PETITION FOR FILING DATE" and the "STATEMENT OF JOSE COLUNGA" both appeared to have been submitted by Express Mail in an envelope having Express Mail Label Number EL717638330US.

On 27 August 2002, applicant submitted the instant "RENEWED PETITION UNDER 37 C.F.R. 1.6(e)".

DISCUSSION

In the "RENEWED PETITION UNDER 37 C.F.R. § 1.6(e)" submitted 27 August 2002, applicant requests that the application papers submitted 20 November 2001 be accorded a receipt date of 19 November 2001 because these papers were attempted to be deposited with the United States Postal Service (USPS) by Express Mail on 19 November 2001 but deposit was refused by the USPS.

On 20 November 2001, the United States Patent and Trademark Office (USPTO) designated the suspension of Express Mail service to Washington, D.C. ZIP Codes 202XX through 205XX (e.g., 20231) as a postal service interruption within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e).

37 CFR 1.6(e) provides:

If interruptions or emergencies in the United States Postal Service which have been so designated by the Commissioner occur, the Patent and Trademark Office will consider as filed on a particular date in the Office any correspondence which is:

- (1) Promptly filed after the ending of the designated interruption or emergency; and
- (2) Accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service.

The "Notification Related to United States Postal Service Interruption, Suspension of the 'Express Mail' Service of United States Postal Service for mail addressed to ZIP Codes 202xx through 205xx" posted on the USPTO web site on 20 November 2001 states that for United States Postal Service interruptions relating to Express Mail, applicant should submit a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail, the statement must indicate the date on which the person attempted to deposit the correspondence with the USPS and that the USPS refused to accept the correspondence, and the statement must be signed in accordance with 37 CFR 10.18. The statement of Jose Colunga filed 27 August 2002 satisfies these requirements. Petitioner has indicated that the "we" and the indication of November 19, 2001 as a Tuesday rather than a Monday in the statement of Jose Colunga filed 20 November 2001 were clerical errors. Also, petitioner has provided a complete copy of all the materials in the correspondence that Mr. Colunga attempted to deposit by Express Mail on Monday, November 19, 2001. The Transmittal Letter included in these papers includes a "CERTIFICATE OF MAILING BY 'EXPRESS MAIL'" for Express Mail Label Number EL561649155US which includes a certificate of mailing date of 19 November 2001. This

Transmittal Letter satisfies the concerns raised in the decision mailed 25 March 2002 regarding the appearance that the "PETITION FOR FILING DATE" and the "STATEMENT OF JOSE COLUNGA" filed 20 November 2001 both appeared to have been submitted by Express Mail in an envelope having Express Mail Label Number EL717638330US.

CONCLUSION

For the reasons set forth above, the application has been accorded a receipt date of 19 November 2001 in accordance with 37 CFR 1.6(e).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application including: (1) date-stamping the transmittal letter (Form PTO-1390), the copy of the international application, and the preliminary amendment **19 November 2001**; (2) changing the receipt date of the application in PALM to **19 November 2001**; and (3) preparing and mailing a NOTIFICATION OF MISSING REQUIREMENTS (Form PCT/DO/EO/905) requiring an oath or declaration in compliance with 37 CFR 1.497(a)-(b), and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date.



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